J. B. JEYARETNAM

v.

PUBLIC PROSECUTOR

HIGH COURT, SINGAPORE
CHAN SEK KEONG J
[CRIMINAL MOTION NO. 62 OF 1989]
8 JUNE 1990

CRIMINAL PROCEDURE: *Appeal against conviction and sentence for an offence under s. 18(a) Public Entertainments Act [Sing] - Question of law whether speech at a public gathering constituted "public entertainment" - Whether refusal by Licensing Officer a nullity - Supreme Court of Judicature Act [Sing], s. 60.*

CONSTITUTIONAL LAW: *Freedom of speech - Whether offence is committed for exercising constitutional right where licence has been wrongfully denied - Article 14(1) of the Singapore Constitution.*

CRIMINAL PROCEDURE: *Reserving questions of law for decision of the Court of Criminal Appeal - Public interest - Whether gravity of the offence a pre-requisite for exercise of Court's power.*

The appellant was charged in the District Court with having provided "public entertainment" without a licence under s. 18(1)(a) of the Public Entertainment Act (Cap. 257). The nature of the entertainment was in the form of a speech made at a public gathering held at a public place. He was convicted and fined, and he appealed against both conviction and sentence. His appeal against conviction was dismissed but the fine was reduced from S$3,500 to S$1,500.

The appellant then applied, under s. 60 of the Supreme Court of Judicature Act ("SCJA") to reserve for the decision of the Court of Criminal Appeal three questions of law, namely:

(a) whether the speech delivered by the appellant constituted "public entertainment" within the meaning of the Public Entertainments Act;

(b) whether the decision of the Licensing Officer to refuse the worker's party a licence to hold the public function was a nullity;

(c) whether the appellant commits any offence because the Licensing Officer has denied the licence which in itself is a violation of the constitution freedom of speech.

The appellant contended that these were serious questions of law because they raised constitutional issues and therefore they were of public interest.

Held:

[1] The offence in respect of which this application was made was not a grave offence; if the gravity of the offence were a pre-requisite condition of the exercise of the Court's power under s. 60 of SCJA, this application would have failed on this ground.

[2] Under s. 2 of the Cap 257, "public entertainment" includes addresses; there was no doubt that the appellant "addressed" the gathering; accordingly, this question was substantially one of fact rather than of law.

[3] With regard to the other two questions, there was no factual foundation on which they could be raised; the appellant failed to challenge the constitutional validity of Cap 257.

Cases referred to:
Jeyaretnam v. Law Society of Singapore [1988] 3 MLJ 425
CCSU v. Minister for the Civil Service [1985] AC 374

Legislation referred to:
Public Entertainments Act (Cap 257) [Sing], s. 18(1)(a)
Constitution of Singapore [Sing], art. 14, (1), (2)
Supreme Court of Judicature Act [Sing], s. 60(1)

For the appellant - In person
For the Public Prosecutor - Sowaran Singh

JUDGMENT

Chan Sek Keong J:

This is an application by the appellant in MA No. 205 of 1988 pursuant to s. 60 of the Supreme Court of Judicature Act ("the SCJA") for certain questions of law to be referred for decision by the Court of Criminal Appeal on the ground that they were of public interest. At the conclusion of the hearing of this application, I dismissed the application and said I would give my reasons later.

The appellant was convicted and fined S$3,500 by the District Court on the charge of having on 10 January 1987 provided public entertainment without a licence, an offence under s. 18(1)(a) of the Public Entertainments Act ("the Act"). The nature of the entertainment was in the form of a speech which he made at a public gathering at the five foot way at No. 80 Boat Quay which was a public place. He appealed against the conviction and sentence. On 10 October 1989 I dismissed the appeal against conviction and reduced the fine to S$1,500 (see [1990] 1 MLJ).

The questions of law which the appellant sought to have referred to the Court of Criminal Appeal were as follows:

(1) Whether on the evidence adduced by the prosecution in police Summons No. 0068 of 1987 the speech of the appellant at the opening of the Workers' Party's premises constituted "public entertainment" within the meaning and scope of that term as defined in the Public Entertainment Act.

(2) Whether the purported decision of the Public Entertainments Licensing Officer to refuse the Workers' Party a licence for the aforesaid function was a nullity for the following reasons:

(i) That the grounds for the refusal were not shown to be grounds upon which a licence may be lawfully refused under the Constitution and the refusal in consequence was a violation of Article 14(1) of the Constitution which secured the right of the appellant to free speech.

(ii) The refusal was not the decision of the officer to whom Parliament had delegated the decision on applications under the said Act.

(3) Where the Public Entertainments Licensing Officer denies a licence under the Public Entertainment Act in violation of the Constitution and specifically Article 14(1) thereof whether the applicant to whom the licence is so denied commits any offence if he exercises his constitutional right to freedom of speech on the occasion for which the licence was sought and wrongfully denied.

Section 60 of the SCJA provides as follows:

> 60.(1) When an appeal from a decision of a subordinate Court in a criminal matter has been determined by the High Court, the Judge may on the application of any party and shall on the application of the public prosecutor reserve for the decision of the Court of Criminal Appeal any question of law of public interest which has arisen in the course of the appeal and the determination of which by the Judge has affected the event of the appeal.
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> (2) ...
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> (3) ...
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> (4) ...
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> (5) For the purposes of this section but without prejudice to the generality of its provisions:
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> (a) any question of law regarding which there is a conflict of judicial authority shall be deemed to be a question of public interest; and
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> (b) the reservation of a question of law for the consideration of the High Court under the provisions of any written law relating to criminal procedure or the exercise by the High Court of any power of revision under any such written law shall be deemed to be an appeal from a decision of a subordinate Court in a criminal matter.

The appellant contended that the questions were serious questions of law which have never before been raised in the High Court and that they raised constitutional issues of freedom of speech, and for those reasons they were of public interest. Counsel relied on the observations of the Privy Council in *Jeyaretnam v. Law Society of Singapore* [1988] 3 MLJ 425 on what is a question of public interest under s. 60 of the SCJA. In that case, their Lordships said:

> The conviction of the appellant on the accounts charge depends on a construction of s. 199 of the Penal Code first propounded by the Chief Justice sitting as a single Judge and later adopted by Judge Foenander and Lai Kew Chai J, which is attacked as bad in law. The convictions on the S$2,000 and S$200 cheque charges depend on findings of fact by the Chief Justice reversing the primary findings of the trial judge on grounds which are attacked as bad in law. The affirmation by the Chief Justice of the conviction by Judge Khoo of the S$400 cheque charge is attacked as bad in law. The appellant has had no opportunity to test any of the questions of law which he claims are involved by appeal to the Court of Criminal Appeal of Singapore or, if necessary, by further appeal to the Board, because the Chief Justice and Lai Kew Chai J refused to reserve any questions of law pursuant to s. 60 of the Supreme Court of Judicature Act and, in the absence of such reservation, neither the Court of Criminal Appeal nor the Board had any jurisdiction to entertain any appeal. If it can be shown that there were questions of law of public interest which should have been reserved for decision by the Court of Criminal Appeal and that this would have led to the quashing of the convictions either by the Court of Criminal Appeal or on appeal by the Board, it must surely be appropriate, to quote Lord Simon's words 'that the conviction(s) should not be conclusive against the accused in the course of disciplinary proceedings, the object of which themselves is, after all, to promote justice'.
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> Their Lordships have from the outset entertained no doubt that these convictions do indeed raise serious questions of law and they find it difficult to understand how any serious question of law arising in a criminal case on which a person's conviction of a grave offence may depend can be said not to be 'of public interest' within the meaning of s. 60(1) of the Supreme Court of Judicature Act. In the end, therefore, the determination of the appeal turns on the question whether the convictions are vitiated by errors of law.

In reliance of the Privy Council's observations on s. 60 of the SCJA, the appellant contended that all his questions were **serious** questions of law on which his conviction for a grave offence depended, and accordingly they were questions of public interest. I have, in my written grounds of decision in Criminal Motion No. 60 of 1989, examined carefully the implications of their Lordships' observations on the meaning of s. 60, and here I propose only to iterate my observations that the omission of their Lordships to elaborate on the nature of a grave offence, a criterion which is not expressly mentioned in the SCJA, leaves the issue at large and in some degree of uncertainty, although, as I have also stated, the offences which the Privy Council was referring to were grave in nature as they were Penal Code offences involving dishonesty and fraud and perjury and the punishments for which extended to fines and/or imprisonment. In the present application, the appellant in submitting that the offence on which he was convicted was a grave offence, but he was unable to assist the Court in determining the essential elements of a grave offence in this context.

In my view, the offence in respect of which this application was made was not a grave offence. The appellant had merely provided public entertainment without a licence, an offence which is not seizable and for which the maximum punishment was a fine of S$5,000. The offence does not imply a lack of honesty or integrity or any of the qualities that make ordinary person shun the company of such an offender. If the gravity of the offence were a pre-requisite condition for the exercise of the Court's power under s. 60 of the SCJA, this application would have failed on this ground only.

The next point is whether the questions were questions of law which raised constitutional issues of freedom of speech and were therefore questions of public interest. In general, I agree with the proposition that any question which raised constitutional rights would be one of public interest which ought to be decided, whenever appropriate, by the final Appellate Court in Singapore. However, I did not agree with the appellant that the questions in this application raised any constitutional issues. Question (1) as to whether the making of a speech to a gathering in a public place to which all members of the public have unrestricted constituted public entertainment with the meaning of that expression in Cap 257 was really a question of fact once it was determined that as a matter of statutory construction that a speech made to such a gathering was an address. I held that it was as s. 2 of Cap 257 defined "public entertainment" to include addresses. There was no doubt that the appellant "addressed" the gathering. Accordingly, this question was substantially one of fact rather than of law, the question being whether the appellant did address the gathering.

Question (2)(i) assumed as proven fact that the grounds for the refusal of the appellant's application for a licence under Cap 257 were not within the grounds specified in the Constitution. (Article 14(2)). The fact was that the Licensing Officer did not give any reason at all for refusing the licence and the appellant had failed to request him to give his reasons which he was statutorily obliged to give if a request had been made. The appellant's attempt to elicit the reasons at the trial was stopped by the trial Judge on the ground that the issue before him was whether or not the appellant had a licence under the Cap 257 when he addressed the gathering. Accordingly, there was no factual foundation on which this question of law could be raised, assuming it was one of public interest.

The same observations apply to question (2)(ii). There was no evidence that the Licensing Officer delegated his function to another person, and even if he had done so, it would clearly not raise a constitutional question but one of administrative law. The principle of *delegatus non potest delegare* too well established and there is no public interest in referring it for decision by a higher Court.

This leads me to question (3), which for the reasons I have given, also had no factual foundation for it to be raised. To that extent, it was a hypothetical question. Furthermore, I did not agree that question (2)(i) raised a constitutional issue. I have stated in my previous judgment that the appellant's failure to challenge (and in fact he conceded) the constitutional validity of the Cap 257 or the scheme of licensing prescribed thereunder meant that Cap 257 was a law which Parliament was authorised by Article 14(2) to enact for the purpose of imposing on the right to freedom of speech and expression conferred by Article 14(1) such restrictions as it considered necessary or expedient for any of the purposes enumerated in that Article. Article 14(1) is subject to Article 14(2) and to the extent that a law is validly made under Article 14(2), the right of free speech must be to the corresponding extent diminished. In other words, by reason of Cap 257, no person has a right to address a gathering in a public place except in accordance with the provisions. On this basis, it must follow that the validity of any decision of the Licensing Officer made in the exercise of his power in the implementation of the scheme of licensing was to be determined by well known administrative law principles of "illegality, irrationality and procedural impropriety" (per Lord Diplock in *CCSU v. Minister For the Civil Service* [1985] AC 374). If the Licensing Officer's decision were held or declared null and void by a Court on any of these grounds, it would merely result in the *status quo ante*, and the appellant would still not have a licence to provide public entertainment.

In the course of his submissions, the DPP advanced an argument that none of the questions of law raised in this application, assuming that they are proper questions of law, affected the course of the appeal as the Court found as a fact that the appellant had never applied for a licence to provide public entertainment. The appellant's reply to this argument was that this fact was not considered as material by the prosecution in the Court below or in the appeal before me. I believe that the real position could have been that the prosecution overlooked this fact as they were not aware that the ground floor and the first floor had different addresses and therefore constituted different "places" for the purpose of the offence. The appellant also contended that as the Court made this finding without giving him an opportunity to address the Court on this point, it also raised a question of public interest as to whether or not the Court was entitled to make such a finding. My answer to the appellant's complaint is that this finding of fact was not based on an evaluation of conflicting testimony on the issue, but on the basis of the appellant's own application form for a licence to provide public entertainment at the branch office of the workers' party which was, by his own admission, not the same place where he also admitted he had provided such entertainment. The circumstance that the appellant's attention was not directed to this fact did not make it any less a fact. In this application, the appellant had the opportunity to address me on why if I had given him the opportunity to address me earlier on the point, it would have made a difference to the conclusions of fact and of law that I had reached. He did not do so, other than to say that the prosecution did not rely on that fact as material to the charge. In my view, the materiality of this fact was not for the prosecution to decide but for the Court.

However, even if I am wrong in making the said finding of fact against the appellant, it does not follow that the DPP's submission is sound. The appellant's appeal against his conviction was dismissed by me on the grounds (i) that the invalidity, even if established, of the Licensing Officer's refusal to issue a public entertainment licence would not have resulted in the appellant having committed no offence since he still had no licence, and, in any event, (ii) the appellant had applied for a licence to provide public entertainment at a place different from the place at which he actually provided such entertainment. The DPP's argument is that even if ground (i) were wrong, it would not have made any difference to the appeal as

it would have been dismissed on ground (ii). I do not accept this argument. The fact was that ground (i) did affect the event of the appeal as the appeal was also dismissed on that ground. A pre-requisite for the application of s. 60 is that the determination of the question of law **has affected** the event of the appeal and **not** that such determination **would not have affected** the event of the appeal. Both the grounds I have given have affected the event of appeal. Accordingly, I do not accept the DPP's construction of the relevant words in s. 60 of the SCJA.

For the reasons I have given, I declined to reserve the appellant's questions of law for the decision of the Court of Criminal Appeal.

Also found at [1990] 2 CLJ 487